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BEFORE THE ARIZONA CORPORATION COMMISSION

MAJESTY CORPORATION
DOCKET CONTROL

2017 JUN -2 P 12: 53

COMMISSIONERS

TOM FORESE – CHAIRMAN

Arizona Corporation Commission

ROBERT BURNS

DOCKETED

DOUG LITTLE

ANDY TOBIN

JUN 02 2017

BOYD DUNN

DOCKETED BY

kmj *GB*

IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE
COMPANY FOR A HEARING TO
DETERMINE THE FAIR VALUE OF THE
UTILITY PROPERTY OF THE COMPANY
FOR RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RETURN
THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

DOCKET NO. E-01345A-16-0123

**EMERGENCY RENEWED MOTION
OF COMMISSIONER ROBERT
BURNS FOR RELIEF STAYING
THESE RATE-MAKING
PROCEEDINGS**

(EXPEDITED RULING REQUESTED)

IN THE MATTER OF FUEL AND
PURCHASED POWER PROCUREMENT
AUDITS FOR ARIZONA PUBLIC SERVICE
COMPANY

Commissioner Robert Burns¹ moves the Commission to immediately issue an order
staying all further proceedings in this rate-setting case pending resolution of the following:

¹ Commissioner Burns and his attorney have both executed this Motion to ensure, as noted in
his Motion to Compel filed in this matter today, that there is no further mistake nor objection

- 1 A. The Emergency Motion of Commissioner Robert Burns to Compel Compliance
2 with Investigatory Subpoenas (Expedited Ruling and Suspension and
3 Continuance of Rate Case Proceedings Requested) filed concurrently with this
4 motion (the “Motion to Compel”);
- 5 B. The Emergency Motion of Commissioner Robert Burns for Relief (1)
6 Confirming that the Administrative Law Judge Will Facilitate Calling and
7 Questioning of Hearing Witnesses; and (2) Approval of his Counsel Participating
8 in Questioning (Expedited Ruling and Suspension and Continuance of Hearing
9 Requested) filed in this docket on April 26, 2017; and
- 10 C. Commissioner Burns’ Motion for Determination of Disqualification and for Stay
11 of Proceedings Pending Full Investigation (Expedited Ruling Requested) filed in
12 this docket on April 27, 2017.

13 The foregoing motions raise critical issues ranging from: 1) the completeness and
14 accuracy of the relevant information provided for the rate request decision by Arizona Public
15 Service Company (“APS”) and Pinnacle West Capital Corporation (“Pinnacle West”); 2)
16 prejudice to Commissioner Burns’ right to participate in the rate case and to conduct the
17 investigation of rate-related and Commissioner disqualification-related information he is
18 entitled to under law; 3) APS’s and Pinnacle West’s violations of their obligations to comply
19 with investigatory subpoenas of a Commissioner; and 4) whether Commissioners other than
20 Commissioner Burns should recuse themselves or be disqualified from participation in this rate
21 case and other matters involving APS. Absent immediate suspension of the proceedings in this
22 rate case, APS will continue to press for a decision on its rate request and the errors, legal

23
24 that Commissioner Burns’ motions cannot be considered because his attorneys were not
25 properly “admitted” to appear for him. Commissioner Burns repeats his assertions from his
26 Motion to Compel that his attorneys have been properly delegated authority to appear and file
27 matters on his behalf and his request and expectation that the other Commissioners shall treat
28 all matters filed in this or any other Commission docket by his attorneys, Baskin Richards
 PLC, as his filing and accord such attorneys all respect and standing that is accorded to
 counsel otherwise appearing on behalf of an individual before the Commission.

1 rights violations, and constitutional due process violations forecast by Commissioner Burns'
2 various motions will be fully manifested. Moreover, as explained in the Motion to Compel,
3 rate decisions that will be made by the Commissioners may be void.

4 The foregoing means that intervenors face prejudicial and unwarranted determinations
5 by potentially disqualified Commissioners, APS may be awarded a substantial rate increase to
6 the prejudice of their utility customers that is based on flawed, incomplete and inaccurate
7 information, and Arizona utility consumers face the prospect of having to pay over \$7 million
8 more per month in charges to APS based on decisions that could be void and/or enacted by
9 Commissioners whose appearance of bias in favor of APS made them constitutionally
10 disqualified from deciding the case. The Commission thus faces unprecedented problems and
11 cascading legal violations based on decisions APS and Pinnacle West made in the interest of
12 hiding their political influence peddling operations, especially their "dark money" operations
13 in the 2014 ACC elections.

14 The responsible, reasonable, prudent and legally defensible path at this point is to
15 suspend all further proceedings in this APS rate case until the matters raised by Commissioner
16 Burns can be fully resolved.

17 Since November, 2015, Commissioner Burns has sought production from APS of
18 information that is at the heart of the pending disputes. [See Exhibit "A"]. Having been
19 stonewalled on much of what he requested, he issued the two investigatory subpoenas in
20 August, 2016. In the almost one year that has passed he has faced one form of tactical move
21 and obstruction after another – including APS's and Pinnacle West's decision to withdraw
22 their pending Superior Court challenge right before he was to file his answer and counterclaim,
23 an unsuccessful request that the Superior Court merely dismiss Commissioner Burns' lawsuit
24 without any consideration of the merits², and objections of many kinds in this rate case.
25 Commissioner Burns has acted responsibly, patiently, and consistent with his legal rights and
26

27 ² The Superior Court has directed Commissioner Burns to file a motion to compel, but has
28 stayed his case and not dismissed it. Thus, as soon as the Commissioners address the motion to
compel he has now filed, the case is prepared to proceed.

1 remedies. He has honored his position and duties and the rules and law governing them. In
2 return he has been forced to submit filing after filing and even forced to pay his own way for
3 legal counsel against the array of in-house and outside lawyers APS and Pinnacle West
4 employ. Now, his steady efforts have been subverted by APS seeking to expedite a
5 “settlement” and quick resolution of its rate request while conspicuously avoiding the simple
6 honesty and transparency expected of a company with its special monopoly status. This is
7 unfair and unjust to Commissioner Burns, to the objecting intervenors, to the consumers served
8 by APS who must pay the requested rates, and to the Arizona citizens who depend on the
9 integrity and completeness of the Commission rate-setting processes. Presuming the other
10 Commissioners share his concerns that the financial desires and might of a monopoly not be
11 arbitrarily elevated over the rights and interests of consumers and other parties, they should
12 agree that APS not be allowed to railroad through its rate request when so many substantial
13 and diverse rights and interests are at stake.

14 A suspension is especially prudent and reasonable because processes exist to resolve the
15 issues raised by Commissioner Burns appropriately and quickly, so long as APS and Pinnacle
16 West cooperate and do not drag things out further. Commissioner Dunn filed a letter dated
17 June 30, 2017 in this docket by which he indicated his belief that the matters raised in
18 Commissioner Burns’ previously filed motions in this rate case should be fully briefed and
19 resolved, and suggesting further that such matters be resolved before the APS rate request is
20 resolved. Commissioner Burns wholeheartedly agrees with Commissioner Dunn that the
21 motions should be resolved before the rate request is resolved. This need not take any
22 unreasonable amount of time. Commissioner Burns has set out in his motions, especially the
23 Motion to Compel, a path that moves the matters expeditiously. That path is:

- 24 A. The Commissioners direct the Administrative Law Judge to promptly resolve the two
25 motions Commissioner Burns filed on April 6th and 7th, 2017 in this case, and do so
26 before any other action is taken on the rate request;
- 27 B. The Commissioners issue their order as laid out in the Motion to Compel confirming
28 that Commissioner Burns has authority to individually issue and enforce his

1 investigatory subpoenas against APS and Pinnacle West and that if the subpoena
2 respondents do not obtain a judicial order limiting enforcement of the subpoenas,
3 Commissioner Burns will be able to enforce them.

4 The foregoing path has many advantages: 1) it avoids the deep constitutional issues raised by
5 the Commissioners attempting to resolve matters in this case when Commissioner
6 disqualification issues have been raised but not determined; 2) it avoids having the
7 Commissioners violate longstanding Arizona law and serve as judges on their own
8 disqualification; 3) it allows APS and Pinnacle West to pursue their subpoena objections
9 through the type of judicial challenge they originally chose to pursue in September of last year
10 but then abandoned, and to do so in the context of Commissioner Burns' already pending
11 Superior Court case before a judge who is already substantially familiar with the subpoena
12 issues; and 4) it places the constitutional and statutory interpretation issues that are at the heart
13 of APS's and Pinnacle West's subpoena objections before a court which has jurisdiction to
14 decide the constitutional and statutory interpretation issues, rather than Commissioners who
15 have no jurisdiction to issue binding constitutional or statutory interpretations.

16 The alternatives to Commissioner Burns' suggested path encourage litigation between
17 Commissioners, and potentially between Commissioners and other outside parties, as they
18 battle over ensuring that Commissioner Burns' individual constitutional and statutory rights
19 are respected, that the other Commissioners do not violate Arizona law by treading ahead
20 where their disqualification is at issue, and that Arizona consumers' interests and the
21 established rate-setting procedures are honored and protected. And the alternatives threaten to
22 deepen public mistrust of the Commission and any individual Commissioners who are already
23 publicly suspected of unjustified abdication to APS and Pinnacle West and self-interest. The
24 Commissioners have a duty to protect the institution and the public's trust in it. The path
25 Commissioner Dunn appears to propose – encouraging full resolution of Commissioner Burns'
26 motions before the rate case is concluded – helps restore the public trust.

27 Other recent developments involving the indictment of a former Commissioner and a
28 political operative associated in media reporting with APS creates more reasons to stay the rate

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1 case. Commissioners Forese, Tobin and Dunn are acting expeditiously on the recognition that
2 this justifies searching (and long-delayed) inquiries into Commission dealings with regulated
3 entities and their political surrogates, ethics rules, and the public interest implications of such
4 utility/commissioner dealings. Were they to blithely carve an exception to such concerns when
5 their own campaigns and APS/Pinnacle West's support of them are the focus of public debate
6 and concern, and where APS/Pinnacle West have been linked in the press to the same political
7 operative at the center of the indictment, they would engender grave suspicions and charges of
8 gross hypocrisy, serving only to heighten public mistrust of the Commission and its
9 Commissioners.

10 Given the foregoing, good cause exists to immediately suspend the rate case, and to
11 issue the relief requested by Commissioner Burns in his Motion to Compel. Commissioner
12 Burns respectfully requests expedited ruling and an order suspending the rate case until his
13 Motion to Compel and his other pending motions in this rate case have been fully addressed.

14
15 DATED this 2nd day of June, 2017.

16 COMMISSIONER ROBERT BURNS

17 
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19

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22 
23

24 William A. Richards
25 Alan Baskin
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28 *Attorneys for Commissioner Robert Burns*

1 ORIGINAL and thirteen (13) copies
2 of the foregoing filed in Docket Nos.
3 E-01345A-16-0036 and E-01345A-16-0123
4 this 2nd day of June, 2017 with:

5 Docket Control
6 ARIZONA CORPORATION COMMISSION
7 1200 West Washington Street
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On this 2nd day of June, 2017, the foregoing document was filed with Docket Control as a Correspondence From Commissioner, and copies of the foregoing were mailed on behalf of Bob Burns, Commissioner - A.C.C. to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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By:



Lynn Jahnke
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EXHIBIT A

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SUSAN BITTER SMITH- Chairman
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DOUG LITTLE
TOM FORESE

ORIGINAL



RECEIVED ARIZONA CORPORATION
COMMISSION

2015 NOV 30 P 2:17

November 30, 2015

AZ CORP COMMISSION
DOCKET CONTROL

RE: Docket No. AU-00000A-15-0309, In the Matter of a Generic Docket Regarding the Campaign Contribution Practices of Public Service Corporations and Other Entities that Appear Before the Commission

Dear Mr. Brandt:

In your recent letter, you state that it is both "unusual" and "unprecedented" for us to request information about APS's expenditures for political speech. I find these statements unwarranted, given the attention that these issues have generated over the past months. At the present time, the public appears to look upon the Commission with suspicion and mistrust because of your alleged campaign contributions. This current state of affairs is not in the Commission's best interests, nor is it in your best interests.

I recognize that both APS and Pinnacle West have a First Amendment right to participate in elections, and it is not my intention to interfere with the exercise of those rights. Intuitively, I understand that you have an interest in supporting candidates who may agree with your views. However, in my opinion, your support for any particular candidate should be open and transparent. Your unwillingness to disclose this information leads to a variety of unfortunate perceptions.

There has been discussion about the scope of the Commission's authority to require the disclosure of this information, especially as relates to Pinnacle West. While I contend that article XV, section 4 provides the Commission with the express authority to subpoena such information from both APS and Pinnacle West, I am—for the moment—content to focus my inquiry upon APS. Specifically, I would like to find out if APS has spent ratepayer money to support or oppose the election of Arizona Corporation Commission candidates. I would like to ensure that only APS's profits are being used for political speech.

Simply put, dollars that APS has received from ratepayers in order to recover the costs of providing utility service should not be used for political speech. Unfortunately, I have thus far seen no evidence that such funds are *not* being spent on political speech. Under the circumstances, transparency requires a full reporting of any campaign contributions expended by APS in the past election cycle. Therefore, I am asking APS to provide my office with a full report of all spending related in any way to the 2014 election cycle—including but not limited to direct contributions and indirect contributions to third-party organizations—within thirty days of the date of this letter. The report should be docketed and should include a description of the source of any such funds, *i.e.*, whether the funds originate from APS's profits or from money intended to cover APS's costs of providing service.

The Commission is APS's regulator, and as a duly elected commissioner, I look forward to APS's full compliance with my request.

Sincerely,

Robert L. Burns
Commissioner

Arizona Corporation Commission

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